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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROGER DUANE ORTEGO and BRYAN
F. GILL, JR., as Trustee of
the Bankruptcy Estate,

07 CV 9641 (CSH)

Plaintiff,

-against-

MORAN TOWING CORPORATION,

Defendant.

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION FOR LEAVE TO FILE FIRST AMENDING COMPLAINT

Preliminary Statement

Defendant Moran Towing Corporation submits this memorandum in opposition to plaintiff's motion for leave to file first amending complaint. The motion was filed on January 24, 2008.

Argument

Plaintiff's motion is defective in several respects. As the docket of this Court will show, the defendant has filed its answer. Therefore plaintiff may only amend his pleading "with the opposing party's written consent or the Court's leave" (Rule 15(a)(2)). The rule provides that the Court should freely give leave to amend "when justice so requires" (id.), but the movant is obliged to show that justice requires the amendment.

Rule 7.1 of the Local Civil Rules of this Court provides that all motions are to be supported by a memorandum of law, setting forth the points and authorities relied upon in support of the motion. Rule 7.1. No memorandum of law or affidavit has been filed with this motion, to show why justice requires that leave to amend the complaint should be given. For these reasons, plaintiff's motion for leave to file a first amending complaint should be denied.

Dated: New York, New York
January 25, 2008

PROFETA & EISENSTEIN
Attorneys for Defendant



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